

HOUSE BILL 2168

By Brooks K

AN ACT to amend Tennessee Code Annotated, Title 10,
Chapter 7, Part 5 and Title 49, relative to data.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 1, is amended by adding Sections 2 through 6 as a new, appropriately designated part.

SECTION 2. As used in this part:

- (1) "Aggregate data" means data collected or reported at the group, cohort, or institutional level;
- (2) "Board" or "state board" means the state board of education;
- (3) "Data system" means the body of student data collected by the department of education;
- (4) "De-identified data" means a student dataset in which parent and student identifying information, including the personal identification number, has been removed;
- (5) "Department" means the department of education;
- (6) "FERPA" means the federal Family Educational Rights and Privacy Act, codified at 20 U.S.C. § 1232g;
- (7) "Personal identification number" means the unique student identifier assigned to a student under § 49-6-5101;
- (8)
 - (A) "Student data" means data collected or reported at the individual student level that is included in a student's educational record;
 - (B) "Student data" includes:

- (i) State and national assessment results, including information on untested public school students;
- (ii) Course taking and completion, credits earned and other transcript information;
- (iii) Course grades and grade point average;
- (iv) Date of birth, grade level and expected graduation date or graduation cohort;
- (v) Degree, diploma, credential attainment and other school exit information such as receipt of the GED® and drop-out data;
- (vi) Attendance and mobility;
- (vii) Data required to calculate the federal four-year adjusted cohort graduation rate, including sufficient exit and drop-out information;
- (viii) Discipline reports limited to objective information sufficient to produce the federal Title IV annual incident report;
- (ix) Remediation;
- (x) Special education data; and
- (xi) Demographic data and program participation information; and

(C) Unless included in a student's educational record, "student data" does not include:

- (i) Juvenile delinquency records;
- (ii) Criminal records;
- (iii) Medical and health records;
- (iv) Student social security number; and
- (v) Student biometric information; and

(9) "Teacher data" means personal summative data, evaluation scores and Tennessee value added assessment system (TVAAS) data, the access to which is limited to LEA administrators, local boards of education, or those with direct supervisory authority who require such access to perform their assigned duties.

SECTION 3. The state board of education shall:

(1) Create, publish and make publicly available a data inventory and dictionary or index of data elements with definitions of individual student data fields currently in the student data system including any individual student data that:

(A) Is required to be reported by state and federal education mandates;

(B) Has been proposed for inclusion in the student data system with a statement regarding the purpose or reason for the proposed collection; and

(C) Is collected or maintained by the department with no current purpose or reason;

(2) Develop, publish and make publicly available policies and procedures to comply with FERPA, § 10-7-504 and other relevant privacy laws and policies.

These policies and procedures shall, at a minimum, require that:

(A) Access to student data and de-identified data in the student data system is restricted to:

(i) The authorized staff of the department and the department's contractors who require access to perform their assigned duties;

(ii) LEA administrators, teachers and school personnel who require access to perform their assigned duties;

(iii) Students and their parents; provided, however, that a student or the student's parents may only access the student's individual data; and

(iv) The authorized staff of other state agencies as required by law;

(B) The department uses only aggregate data in public reports or in response to record requests in accordance with Section 4.

(C) The commissioner develops criteria for the approval of research and data requests from state and local agencies, the general assembly, researchers and the public; provided, however, that:

(i) Unless otherwise approved by the state board, student data maintained by the department shall remain confidential; and

(ii) Unless otherwise approved by the state board to release student data or de-identified data in specific instances, the department may only use aggregate data in the release of data in response to research and data requests; and

(D) Students and parents are notified of their rights under federal and state law. Parental permission shall be required before the release of any student data for the purposes of research under subdivision (2)(C);

(3) Develop a detailed data security plan that includes:

(A) Guidelines for authorizing access to the teacher data system and to individual teacher data including guidelines for authentication of

authorized access. These guidelines shall comply with the requirements of § 49-1-606 and § 49-1-302(d)(7);

(B) Guidelines for authorizing access to the student data system and to individual student data including guidelines for authentication of authorized access;

(C) Privacy compliance standards;

(D) Privacy and security audits;

(E) Breach planning, notification and procedures; and

(F) Data retention and disposition policies;

(4) Ensure routine and ongoing compliance by the department with FERPA, § 10-7-504, other relevant privacy laws and policies, and the privacy and security policies and procedures developed under the authority of this part, including the performance of compliance audits;

(5) Ensure that any contracts that govern databases, assessments or instructional supports that include student data or de-identified data and are outsourced to private vendors include express provisions that safeguard privacy and security and include penalties for noncompliance; and

(6) Notify in writing the governor and the general assembly annually of the following:

(A) New student data proposed for inclusion in the state student data system;

(B) Changes to existing data collections required for any reason, including changes to federal reporting requirements made by the United States department of education;

(C) Any exceptions granted by the state board in the past year regarding the release or out-of-state transfer of student data or de-identified data accompanied by an explanation of each exception; and

(D) The results of any and all privacy compliance and security audits completed in the past year. Notifications regarding privacy compliance and security audits shall not include any information that would itself pose a security threat to the state or local student information systems or to the secure transmission of data between state and local systems by exposing vulnerabilities.

SECTION 4.

(a) Unless otherwise approved by the state board, the department shall not transfer student data or de-identified data deemed confidential under subdivision (2)(C)(i) of Section 3 to any federal, state or local agency or other organization or entity outside of the state, except when:

(1) A student transfers out of state or an LEA seeks help with locating an out-of-state transfer;

(2) A student leaves the state to attend an out-of-state institution of higher education or training program;

(3) A student registers for or takes a national or multistate assessment;

(4) A student voluntarily participates in a program for which such a data transfer is a condition or requirement of participation;

(5) The department enters into a contract that governs databases, assessments, special education or instructional supports with an out-of-state vendor; or

(6) A student is classified as "migrant" for federal reporting purposes;

(b) Unless otherwise approved by the state board, the department shall not transfer teacher data deemed confidential to any federal, state or local agency or other organization or entity outside of the state, except when:

(1) A teacher accepts a teaching position out of state or an LEA seeks help with locating information on a teacher who formerly taught in another state;

(2) A teacher leaves the state to attend an out-of-state institution of higher education or training program;

(3) A teacher voluntarily participates in a program for which such a data transfer is a condition or requirement of participation; or

(4) The department enters into a contract that governs databases, assessments, special education or instructional supports with an out-of-state vendor.

SECTION 5.

(a) Parents and guardians have the right to inspect and review their children's education records maintained by the school.

(b) Parents and guardians have the right to request student data specific to their children's educational records.

(c) LEAs shall provide parents or guardians with an electronic copy of their children's educational records upon request.

(d)

(1) The department shall develop a model student records policy for LEAs that requires an LEA to:

(A) Annually notify parents and guardians of their right to request student information;

(B) Ensure security when providing student data to parents or guardians;

(C) Ensure student data is provided only to authorized individuals;

(D) Set the timeframe within which requested records must be provided; and

(E) Ensure that LEAs have a plan to allow parents and guardians to view online, download, and transmit data specific to their children's educational records.

(2) The department shall develop the model student records policy by December 31, 2014. An LEA shall adopt the model policy or develop its own policy prior to the beginning of school for the 2015-2016 school year. Before implementing a policy other than the model policy, an LEA shall submit the policy to the department for approval.

SECTION 6. LEAs and schools shall not collect individual student data on:

(1) Political affiliation; and

(2) Religion.

SECTION 7. Tennessee Code Annotated, Section 49-1-302(d), is amended by adding the following language as a new subdivision:

(7) Teachers' personal summative data, evaluation scores, TVAAS data and other student growth data shall not be public records and shall be made available only to the specific teacher, the teacher's appropriate administrators as designated by the local board of education and school board members.

SECTION 8. Any collection of student data by the department existing on July 1, 2014, shall not be considered a new student data collection in accordance with subdivision (6)(A) of Section 3 of this act.

SECTION 9. The state board is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 10. This act shall take effect July 1, 2014, the public welfare requiring it.